121—253

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 177.

EDMUND MENARD, PLAINTIFF IN ERROR,

vs.

THOMAS GOGGAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 16, 1883.

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1 In the Circuit Court of the United States for the Eastern District of Texas, Holding Sessions at Galveston, in the Fifth Circuit.

EDMUND MENARD
v.
W. D. WILLIS, TOM MOORE, JOHN F. CARR, K. B. DE WALT, THOMAS GOGGAN, & JOHN GOGGAN. } Law. No. 1168.

Be it remembered that in the above entitled and numbered cause, lately pending in said court, in which final judgment was rendered at the regular March term of said court, A. D. 1883, to wit, on the 14th day of March, A. D. 1883, the Honorable Amos Morrill, judge of the district court of the United States for the eastern district of Texas, presiding, the following proceedings were had and taken in said court, to wit:

2 *Original Petition. Filed July* 19, 1881.

In Circuit Court of [the] U. S. for the Eastern District of Texas, at Galveston.

THE STATE OF TEXAS, *Galveston County:*

To the Hon. Amos Morrill, judge of said court:

The petition of Edmund Menard, who resides in Randolph county, in the State of Illinois, plaintiff, complaining of Walter D. Willis, Tom Moore, John F. Carr, and K. B. De Walt, whose given name is to plaintiff unknown, who reside in the county of Polk and State of Texas, within the eastern district of Texas, with respect repsents unto your hon. court that on the 3rd day of February, A. D. 1880, plaintiff was lawfully seized and possessed of that certain league of land hereinafter described, situated in Polk county, Texas, which is within the eastern district of Texas, holding the same in fee-simple; that on the day and year last aforesaid the defendants entered upon said premises and ejected plaintiff therefrom, and that said defendants unlawfully withhold from plaintiff the possession thereof, to his damage five thousand dollars; that the premises so entered upon and unlawfully withheld from plaintiff by said defendants are described and situated as follows, to wit: That certain league of land containing forty-four hundred and twenty-eight acres, granted to Peter J. Menard, as a colonist, by the commissioner,

3 George Antonio Nixon, on the 20th July, A. D. 1835, lying and being situated in the county of Polk, formerly Liberty county, and beginning at and adjoining the northern line of a tract of land granted to Joaken de Rumayar, or commonly known as Menard's mills tract, and the said line of the said mill tract, being the southern line of said league of land, and being bounded on the north by a league of land granted to Geraldus S. Thomas, and on the west by the Trinity river, the field-notes of which will be given hereafter.

Plaintiff alleges that said *said* tract of land is of the full value of five thousand dollars.

Wherefore plaintiff prays that said defendants be cited to answer

hereto, and that, after due proceedings had, plaintiff have judgment for the restitution of the above-described premises for his damages, for costs, and for general relief in the premises.

And as in duty bound he will ever pray, &c.

W. B. DENSON,
Att'y for Plaintiff.

Endorsements: C. L. No. 1168. Edmund Menard *vs.* W. D. Willis *et als.* Original petition. Filed July 19, 1881. C. Dart, clerk. W. B. Denson."

Citation for Walter D. Willis. Issued July 20, 1881.

United States Circuit Court.

4 The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon Walter D. Willis, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the seventh day of November next, to answer the petition of Edmund Menard, No. 1168, filed July 19, 1881, against him, Tom Moore, John F. Carr, and K. B. De Walt, in an action of trespass to try title and for damages, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 20th day of July, in the year of our Lord eighteen hundred and eighty-one, and of American Independence the 106th year.

[SEAL.] C. DART,
Clerk — Eastern District [of] Texas, at Galveston.

Marshal's Return.

Received this writ on the 20th day of July, 1881, and I executed the same on the 3d day of August, 1881, by delivering to the within-named defendant, Walter D. Willis, at Livingston, Polk county, Texas, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

5 WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

Endorsements: "C. L. No. 1168. Edmund Menard *vs.* W. D. Willis *et al.* Issued 20th day of July, A. D. 1881. C. Dart, clerk U. S. court, E. D. T., at Galveston. Returned & filed Aug. 13, '81. C. Dart, clerk."

Citation for Tom Moore. Issued July 20, 1881.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon Tom Moore, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the seventh day of November next, to answer the petition of Edmund Menard, No. 1168, filed July 19, 1881, against him, Walter D. Willis, John F. Carr, and K. B. De Walt, in an action of trespass to try title and for damages, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

6 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 20th day of July, in the year of our Lord eighteen hundred and eighty-one, and of American Independence the 106th year.

[SEAL.] C. DART,

Clerk — Eastern District [of] Texas, at Galveston.

Marshal's Return.

Received this writ on the 20th day of July, 1881, and I executed the same on the 3rd day of August, 1881, by delivering to the within-named defendant, Tom Moore, at Livingston, Polk county, Texas, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

Endorsements: "C. L. No. 1168. Edmund Menard *vs.* W. D. Willis *et al.* Issued 20th day of July, A. D. 1881. C. Dart, clerk U. S. court, E. D. T., Galveston. Returned and filed Aug. 13, '81. C. Dart, clerk.

Citation for John F. Carr. Issued July 20, 1881.

United States Circuit Court.

The President of the United States of America to the marshal
7 of the eastern district of Texas, Greeting:

You are hereby commanded to summon John F. Carr, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the seventh day of November next, to answer the petition of Edmund Menard, No. 1168, filed July 19,

1881, against him, Walter D. Willis, Tom Moore, and K. B. De Walt, in an action of trespass to try title and for damages, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 20th day of July, in the year of our Lord eighteen hundred and eighty-one, and of American Independence the 106th year.

[SEAL.] C. DART,

Clerk — Eastern District [of] Texas, at Galveston.

Marshal's Return.

Received this writ on the 20th day of July, 1881, and I executed the same on the 8th day of August, 1881, by delivering to the within-named defendant, John F. Carr, at Smithfield, Polk county,
8 Texas, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

Endorsements: "C. L. No. 1168. Edmund Menard *vs.* W. D. Willis *et al.* Issued 20th day of July, A. D. 1881. C. Dart, clerk U. S. court, E. D. T., Galveston. Returned and filed Aug. 13, '81. C. Dart, clerk."

Citation for K. B. De Walt. Issued July 20, 1881.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon K. B. De Walt, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the seventh day of November next, to answer the petition of Edmund Menard, No. 1168, filed July 19, 1881, against him, Walter D. Willis, Tom Moore, and John F. Carr, in an action for trespass to try title and for damages, of which you will serve the said defendants with the accompanying copy of said petition.

9 Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 20th day of July, in the year of our Lord eighteen hundred and eighty-one, and of American Independence the 106th year.

[SEAL.] C. DART,

Clerk — Eastern District [of] Texas, at Galveston.

Marshal's Return.

Received this writ on the 20th day of July, 1881, and I executed the same on the 6th day of August, 1881, by delivering to the within-named defendant, K. B. De Walt, near Livingston, Polk county, Texas, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

Endorsements: "C. L. No. 1168. Edmund Menard *vs.* W. D. Willis *et al.* Issued 20th day of July, A. D. 1881. C. Dart, clerk U. S. court, E. D. T., Galveston. Returned and filed Aug. 13, 1881. C. Dart, clerk."

Disclaimer of W. D. Willis. Filed October 15, 1881.

In the Circuit Court of [the] U. S. for the Eastern District of Texas.

10 EDWARD MENARD
vs.
W. D. WILLIS *et al.* } No. 1168.

THE STATE OF TEXAS, *County of Galveston:*

And now comes Walter D. Willis, one of the defendants in the above-styled cause, and disclaims any interest in the land and premises sued for in this suit, and says he has no interest in the same or any part thereof and is not setting up any claim to the same, and asks that said cause be dismissed as to him, and that he have his costs in this behalf expended, &c.

WALTER D. WILLIS,
For Himself.

Endorsements: "C. L. 1168. Menard *v.* Willis *et al.* Disclaimer of W. D. Willis. Filed Oct. 15, 1881. C. Dart, clerk."

Plaintiff's Supplemental Petition. Filed Nov'r 1, 1881.

In U. S. Circuit Court for the Eastern District of Texas.

EDMUND MENARD
vs.
W. D. WILLIS *et al.* } No. 1168.

To the Hon. Amos Morrill, judge of said court:

Now comes the plaintiff in the above entitled and numbered cause and files this his supplemental petition to his original petition filed herein on the 19th day of July, 1881, and alleges as follows: That
11 Thomas Goggan and John Goggan, who reside in the city of Galveston and said State, and who do business under the firm name and style of Goggan and Bro., have entered and trespassed upon said league of land described in plaintiff's original peti-

entitled and numbered suit, and, excepting to the petition of plaintiff, says that the matters and things as therein stated and alleged are not sufficient in law for him to have and maintain his said action; wherefore he prays judgment; and for answer herein this defendant pleads not guilty to the wrongs and trespasses charged, and of this he prays inquiry; and as in duty bound, &c.

THOMAS GOGGAN,
By his attorneys, FINLEY & WILSON.

Endorsements: "C. L. 1168. Edmund Menard *v.* W. D. Willis *et al.* Original answer of Thomas Goggan. Filed Nov'r 10, 1881. C. Dart, clerk."

Original Answer of John Goggan. Filed Nov'r 10, 1881.

In the Circuit Court of the United States, E. D. T.

EDMUND MENARD
v.
W. D. WILLIS *et al.* } C. L. No. 1168.

Now comes John Goggan, one of the parties made defendant in plaintiff's supplemental petition in the above entitled and numbered suit, and disclaims any right, title, interest, or claim in and
16 to the *the* property made the subject-matter of plaintiff's suit, and for answer, if required, pleads not guilty, and prays that he be not required to further answer, but that he go hence, with the costs incurred in this proceeding against him; and as in duty, &c.

JOHN GOGGAN,
By his attorneys, FINLEY & WILSON.

Endorsements: "C. L. 1168. Edmund Menard *v.* W. D. Willis *et al.* Original answer of John Goggan. Filed Nov. 10, 1881. C. Dart, clerk."

Original Answer of Defendant, John F. Carr. Filed Nov'r 12, 1881.

In the Circuit Court of the United States, Eastern District of Texas.

ED. MENARD
v.
W. D. WILLIS *et als.* } C. L. 1168.

Now comes John F. Carr, one of the defendants in the above entitled and numbered cause, by att'y, and for answer to pl't'ff's petition says:

(1.) He demurs thereto for insufficiency, because he says the same states no cause of action as to him, and of this prays the judgment of the court; wherefore, &c.

(2.) And specially excepting to said petition this def't says the same is insufficient in this, that it fails to designate and describe with proper certainty the land & premises sued for in his pretended action herein brought against this def't, and of this prays judgment, &c.

17 (3.) And, if necessary to further answer in this behalf, in nowise waiving his demurrers above pleaded, he says: (1) He denies all and singular the allegations set forth and contained in said pl'ff's said petition; and (2) he specially denies that he has committed any trespass or made any entry upon the said land and premises, and of this he puts himself upon the country, and prays judgment that he go hence with his costs in this behalf incurred; and for general relief, &c.

DAVIS & SAYLES,
Att'ys for Def't Carr.

Endorsements: "1168. Ed. Menard *vs.* W. D. Willis *et als.* Original answer of defendant, John F. Carr. Filed Nov'r 12th, 1881. C. Dart, clerk. Davis & Sayles."

From Minutes Nov'r Term, Dec'r 7, 1881.

EDMUND MENARD
v.
W. D. WILLIS *et al.* } 1168.

Upon application leave is given the defendants to amend.

From Minutes Nov'r Term, Dec'r 24, 1881.

EDMUND MENARD
v.
W. D. WILLIS *et al.* } 1168.

Continued by consent.

Notice of Filing Papers. Filed Ap'l 4, 1882.

In Circuit Court of the United States for the Eastern District of Texas.

EDMUND MENARD
vs.
WILLIS *et als.* } No. 1168.

18 The defendants, or their att'ys of record, Messrs. Davis & Sayles and Finley & Wilson, will take notice that I have this day filed the following papers, constituting the plaintiff's chain of title to the land in controversy herein, to wit:

First. A translated copy of Spanish title to Peter J. Menard, dated 18th July, 1835, for 1 league of land.

Second. Deed from Peter J. Menard to Pierre Menard, dated Feb'ry 22nd, 1843.

Third. Judg't of the dist. court of San Jacinto county, between E. Menard *et als vs.* F. Maxwell *et als.*, No. 266 of said court, and supplement thereto. April 8th & Nov. 21, 1879.

Fourth. Order of sale under above judg't and return of sheriff thereon, the first dated 30th December, 1879, and second 26th April, 1880.

Fifth. Deed from P. W. Herbert, sheriff, to Edmund Menard, dated 3rd February, 1880.

W. B. DENSON,
Att'y for Plaintiff.

We accept service of the notice of filing said papers [and] waive copies and time, save to inspect them before going into trial.
April 3rd, 1882.

DAVIS & SAYLES,
Att'y for Def't.
FINLEY & WILSON,
Atty's for Thos. Goggan.

19 Endorsements: "C. L. No. 1168. Edmund Menard *vs.* Willis *et als.* Notice of filing papers. Filed April 4, 1882. C. Dart, clerk."

Translated Copy of Original Grant Issued to Pedro J. Menard July 18, 1835. *Filed April* 4, 1882.

For the biennial term of 1834 & 1835.

[Third Stamp. Two Reals. L. S.]

No. 150.

To the special commissioner of Citizen Joseph Vehlein's colony:

I, Pedro J. Menard, a native of Illinois, with due respect, do appear before you and say that, induced by the liberal provisions of the colonization laws of this State, I have come, with my family, composed of my wife and one child, to settle in it permanently, provided that, taking into consideration the accompanying certificate, you be pleased to admit me as colonist in said colony, granting me the quantity of land to which I am entitled in the vacant territory of the same. Therefore I request you to do as aforesaid, wherein I shall receive favor and justice.

Nacogdoches, January 28, 1835.

(Signed) PEDRO J. MENARD.

Decision.

The party interested will call, with the accompanying certificate, on the proper "impresario" for his report upon the foregoing application.

Nacogdoches, January 28, 1835.

(Signed) GEORGE ANT'O NIXON,
Citizen Comm'r.

Report.

MR. COMMISSIONER: I certify that the party interested is one of the colonists introduced by my principal under the contract entered into by him on the 21st of December, 1826. Therefore you
20 may order the survey of the land for which he makes application.

Nacogdoches, June 28, 1835.

Decree.

NACOGDOCHES, *June* 28, 1835.

Presented and admitted, with the accompanying documents.

The surveyor, Citizen Arthur Henrie, will cause a tract of land pointed out by the party interested to be surveyed, provided that it be entirely vacant. He will examine the *feild*-notes, which shall be translated in this office—further action being taken as deemed most advisable.

Thus I have determined, and did sign hereto, with two witnesses, according to law.

(Signed) GEORGE ANT'O NIXON,
Citizen Comm'r.
(Signed) NATH'L AMORY, *Assisting.*
(Signed) J. ROBERTS, *Assisting.*

Field-notes.

Mr. COMMISSIONER: The tract of land surveyed for the colonist Pedro J. Menard is situated on the east bank of the Trinity river, beginning on a box elder 15 inches in diameter, forming the southwest corner of S. S. Thomas' survey, from which a cottonwood 72 inches in diameter bears south 40 degrees 30 minutes west $18\frac{8}{10}$ varas distant and a gum tree 24 in diameter bears north 45° east $11\frac{3}{10}$ varas distant; thence south 89° east $8{,}902\frac{9}{10}$ varas were measured and the 2nd corner was formed, from which a red oak 30 inches in diameter bears north 70° east $8\frac{4}{10}$ varas distant and another red oak, 29 inches in diameter, bears south 5° east $15\frac{2}{10}$ varas distant; thence south 1° west 2,500 varas were measured, and the 3rd corner was formed, from which a gum tree 22 inches in diameter bears south 37° 10′ west $6\frac{9}{10}$ varas distant and a beech 26 inches in diameter bears south 23° 30′ east $12\frac{9}{10}$ varas distant; thence north
21 89° west $10{,}305\frac{5}{10}$ varas were measured, and the 4th corner was formed on the bank of said river, from which a cottonwood 24 inches in diameter bears north 33° 30′ east 24 varas distant and another cottonwood, 30 inches in diameter, bears south 66° 30′ east $40\frac{2}{10}$ varas distant; thence following said river, with its meanders, up to the 1st corner—thus completing the league of land which you ordered me to cause to be surveyed, 9 labors of which belong to the class of arable land and the remaining 16 labors to that of pasture. Its shape is set forth on the accompanying duplicates.

Nacogdoches, July 18, 1835.

(Signed) W. S. ALLEN, *Translator.*

Decree.

NACOGDOCHES, *July* 18, 1835.

The survey of the league of land for the colonist Pedro J. Menard being concluded, let the respective title be issued; and of the two plats returned by the surveyor let one be attached to these proceedings and the other to the "testimonio," both being paraphed by me.

Thus I have determined, and did sign hereto with two witnesses, according to law, which I certify.

(Signed) GEORGE ANT'O NIXON,
Citizen Comm'r.
(Signed) NATH'L AMORY, *Assisting.*
(Signed) J. ROBERTS, *Assisting.*

[Third Stamp. Two Reals. L. S.]

For the biennial term of 1834 & 1835.

Title of possession.

I, citizen George Antonio Nixon, special commissioner of the supreme government of the State of Coahuila & Texas, for distributing lands, giving possession thereof, and issuing titles in Joseph Vehlein's colony: Whereas Pedro J. Menard has been admitted as colonist under the colonization contract entered into by the "empresario" citizen, Joseph Vehlein, with the supreme govern-
22 ment of the State, on the 21st of December, 1826, said Pedro J. Menard having fully proved that he has a family composed of his wife and one child, and the qualifications required by the colonization law of March 24, 1825, being found in him: In conformity to said law and to the instructions by which I am governed, in the name of the State, I concede unto and confer upon said Pedro J. Menard and put him in possession, real and personal, of one league of land situated on the east bank of the Trinity river, the boundaries of which are set forth on the plat and field notes returned by the surveyor, citizen Arthur Henrie, as appears in these proceedings. Nine labors of said tract of land belong to the class of arable land and the remaining sixteen labors to that of pasture, which serves as a qualification for the price he must pay the State according to article twenty-second of said law, allowing him the instalments therein specified under the penalties therein established, being notified that within one year he must build fixed and permanent monuments in every angle of the tract of land, and must settle and cultivate it in conformity to the requirements of said law, scrupulously complying with its mandates and those of other laws, and shall never transfer it to *mort main*. Therefore, exercising the power vested in me by the proper law and consequent instructions, I issue the present title, and order that a "testimonio" of it be transcribed and delivered to the party interested in order that
he may own and enjoy the tract of land — unto him, his
23 children, heirs, and successors, or any person who, under him or them, interest or right may hold.

Given at the town of Nacogdoches, on the 18th day of July, 1835. Signed by me with my two assisting witnesses, according to law.

(Signed) GEORGE ANT'O NIXON,
Citizen Comm'r.
(Signed) NATH'L AMORY, *Assisting.*
(Signed) I. ROBERTS, *Assisting.*

STATE OF TEXAS, GENERAL LAND OFFICE,
AUSTIN, *December* 14, 1881.

I certify that the foregoing is a correct translation of the original title existing in the Spanish archives of this office.

X. B. DEBRAY,
Spanish Clerk & Translator.

I, W. C. Walsh, commissioner of the general land office of the State of Texas, do hereby certify that X. B. Debray, whose signature is subscribed to the foregoing certificate, is the Spanish clerk and translator of this office, duly qualified according to law, and that his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereto set my hand and caused the seal of the General Land Office to be affixed on the day and date last above written.

W. C. WALSH, *Commissioner.*

W. B. Denson, Galveston.

Fees, $4.50.

24 Endorsements: "C. L. 1168. E. Menard *vs.* J. F. Carr *et als* Filed April 4, 1882. C. Dart, clerk."

Deed from Peter J. Menard to Pierre Menard, dated Feb'ry 22, 1843. *Filed April* 4, 1882.

REPUBLIC OF TEXAS, *County of Galveston:*

Know all men by these presents that I, Peter J. Menard, of said Republic and county, for and in consideration of the sum of six thousand six hundred and forty-two dollars to me in hand paid at and before the sealing and delivery of these presents by Pierre Menard, of Randolph county, State of Illinois, one of the United States of North America, have sold, granted, bargained, and released, and by these presents do sell, grant, bargain, and release, unto the said Pierre Menard all that certain league of land granted to me, the said Peter J. Menard, as a colonist by the commissioner, George Antonio Nixon, on the 18th day of July, A. D. one thousand eight hundred and thirty-five, and lying and being situate in the county of Liberty, and beginning at and adjoining the northern line of a tract of land granted to Joakim Fernandez de Romayor, commonly known as "Menard's mill tract," and the said line of said mill tract being the southern line of said league of land, and being bounded on the north by a league of land granted to Giraldus S. Thomas, and on the west by the Trinity river, and containing within the aforesaid boundaries one league or four thousand four hundred and twenty-eight acres of land; to have and to hold the above-described league
25 of land with — and singular the rights, members, and appurtenances to the same belonging or in anywise appurtaining unto the said Pierre Menard, his heirs, successors, and assigns, forever; and I, the said Peter J. Menard, hereby bind and obligate myself, my heirs, successors, and assigns, unto the said Pierre Menard, his heirs, successors, and assigns, the title to the afore-described league of land, with all and singular the rights, members, and appurte-

nances to the same being, belonging, or appurtaining to him, the said Pierre Menard, his heirs, successors, and assigns, forever, to warrant and defend.

In witness whereof I have hereunto set my hand and seal this twenty-second day of February, in the year of our Lord one thousand eight hundred and forty-three.

[Wafer or seal rubbed off on original.]

PETER J. MENARD.

REPUBLIC OF TEXAS, *County of Liberty:*

Be it remembered that on the 12th day of March, A. D. 1843, before me, the undersigned, personally came and appeared Peter J. Menard, who acknowledged that he signed, sealed, and delivered the within deed of conveyance for the uses and purposes therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and seal of office — date last above written.

[SEAL.] WM. B. DUNCAN, *R. L. C.*,
Per H. JACKSON, *Dep't.*

Presented for record March 12th, 1843.

WM. B. DUNCAN, *R. L. C.*,
Per H. JACKSON, *Dep't.*

26 This is to certify that the foregoing deed of conveyance and certificate were duly registered in my office on the 27th of March, A. D. 1843, in record-book E, pages 643 & 644.

In testimony whereof I have hereunto set my hand *hand* and seal of office — date last above written.

[SEAL.] WM. B. DUNCAN, *R. L. C.*,
Per H. JACKSON, *Dep't.*

Certificate of Record.

STATE OF TEXAS, *County of Polk:*

I, T. F. Meece, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly and correctly recorded in my office on the 26th day of October, 1877, at 9¾ o'clock a. m., in record-book 2, pages 141 & 142.

In witness whereof I hereunto sign my name and affix the seal of said court, at office, in Livingston, this 26th day of October, 1877.

[SEAL.] T. F. MEECE,
Clerk of County Court, Polk Co., Texas,
By T. L. FREEMAN, *Deputy.*

* * * * * * *

27 Filed for record November 8th, 1877, and recorded the same day and year in book C of deeds of Liberty county, Texas, on pages 422, 423, & 424.

Given under my hand and seal November 8th, 1877.

[SEAL.] B. F. CAMERON,
Clerk C. C. L. Co.

Endorsements: "Peirre Menard, by Peter J. Menard, one leage of land, 4,428 acres. No. 174. C. L. 1168. Filed for record this 18th day of October, A. D. 1877, at 9 a. m. T. F. Meece, C. C. Polk Co. C. L. 1168. E. Menard *vs.* J. F. Carr *et als.* Filed April 4, 1882. C. Dart, clerk. Record, $1. Fees, $162."

From Minutes March Term, April 8, 1882.

EDMUND MENARD
v.
W. D. WILLIS *et al.* } 1168.

Continued by plaintiff with the consent of defendants.

Original Answer of Tom Moore. Filed April 8th, 1882.

In the Circuit Court of the United States for the Eastern District of Texas, Holding Sessions at Galveston. March Term, 1882.

EDMUND MENARD
vs.
W. D. WILLIS *et als.* } 1168.

Now comes Tom Moore, one of the defendants in said cause, and for answer to the said plaintiff's petition says:

28 (1.) That the said petition and the matters and things therein contained, as the same are therein stated, are insufficient in law to authorize said plaintiff to have and maintain his aforesaid action, and of this said def't prays the judgment of the court, whether, &c.

(2.) Said defendant, in the event his said demurrer be not sustained, pleads and says that it is not true that the said plaintiff is the legal or equitable owner of the land and premises sued for herein, and this defendant denies all and singular the allegations of said plaintiff, and now here pleads not guilty to the same or of any of said supposed wrongs, injuries, and trespasses laid to his charge in said petition, and of this he puts himself upon the country, &c.

DAVIS & SAYLES,
Att'ys for Def't Moore.

Endorsements: "1168. Edmund Menard *vs.* W. D. Willis *et als.* Original Answer of Tom Moore. Filed April 8, 1882. C. Dart, clerk, by Geo. C. Rives, dep'ty. Davis & Sayles, for Moore."

Plaintiff's Amended Petition. Filed March 13, 1883.

In Circuit C't of U. S. for the Eastern Dist. of Texas.

EDMUND MENARD
vs
W. D. WILLIS *et als.* } No. 1168.

Now comes the plaintiff in the above styled and numbered
29 cause, by leave of the court, and amends his original and supplemental petitions filed herein as follows, to wit:

The league of land referred to in said petitions is more particularly described & identified as follows: Situated on the east bank of the Trinity river, beginning on a box elder 15 inches in diameter forming the southwest corner of the Thomas survey, from which a cottonwood 72 inches in dia. bears S. 40° 30′ west, $18\frac{8}{10}$ varas distant, and a gum tree 24 inches in dia. bears N. 45° east, $11\frac{3}{10}$ v's distant; thence south 89° east $8{,}902\frac{9}{10}$ varas were measured, and the 2nd corner was formed, from which a red oak 30 inches in dia. bears north 70° east $8\frac{4}{10}$ varas distant, and another red oak 29 inches in diameter bears S. 5° east $15\frac{2}{10}$ varas distant; thence S. 1° west 2,500 v's were measured, and the 3rd corner was formed, from which a gum tree 22 inches in dia. bears S. 37° 10′ west, $6\frac{9}{10}$ v's distant, and a beech 26 inches in diameter bears south 23° 31′ east $12\frac{9}{10}$ v's distant; thence north 89° W. $10{,}305\frac{5}{10}$ varas were measured, and the 4th corner was formed on the bank of said river, from which a cottonwood 24 inches in dia. bears N. 23° 30′ E., 24 varas distant, and another cottonwood 30 inches in dia. bears S. 66° 30′ east $40\frac{2}{10}$ varas distant; thence following said river with its meanderings up to the first corner, thus completing one league of land, for which plaintiff prays as in original petition.

And plaintiff alleges that the defendant, Thomas Moore,
30 obtained, by means unknown to your petitioner, a fraudulent and illegal title to the land in controversy herein, and has made deeds to the other defendants herein, and said deeds are clouds upon plaintiff's title to said property.

And plaintiff prays the court to remove said clouds from his title and quiet his possession to the said land; and, as in duty bound, he will ever pray, &c.

W. B. DENSON,
Counsel for Plaintiff.

Endorsements: "C. L. 1168. Edmund Menard *vs.* W. D. Willis *et als.* Plaintiff's amended petition. Filed March 13, 1883. C. Dart, cl'k, by Geo. C. Rives, dep'ty. W. B. Denson."

Deed from Tom Moore to Thomas Goggan. Filed March 14, 1883.

THE STATE OF TEXAS, *County of Polk:*

Know all men by these presents that I, Tom Moore, of said county and State, for and in consideration of the sum of four hundred dollars to me in hand paid by Thomas Goggan, of Galveston county, the receipt of which sum I hereby acknowledge, have bargained and

sold, and do hereby sell, alien, release, and convey, unto said Thomas Goggan the following-described real estate, to wit: Twelve hundred and eighty (1,280) acres of land lying and being situate on the east side of the Trinity river, in the said county of Polk and State of Texas, being a portion of that certain league of land granted by the government of Coahuila and Texas to Peter J. Me-
31 nard on the 18th day of July, A. D. 1835, and sold by said Menard to Menard and Vallez, by Menard and Vallez to J. H. Treselizan, by said Treselizan to W. L. Douglass, and by said William L. Douglass to me, the portion of said league hereby conveyed beginning at the southeast corner of said P. J. Menard league at a corner of the P. A. Sublett league; thence north 1,900 varas — corner; thence west 3,800 varas to corner; thence south 1,900 varas to corner; thence east 3,800 varas to the place of beginning.

To have and to hold the same, together with all and singular the rights, tenements, hereditaments, and appurtenances to the same belonging, or in anywise incident or appertaining, unto the said Thomas Goggin, his heirs and assigns, forever. And I, the said Tom Moore, do hereby bind myself, my heirs and legal representatives, to warrant and forever defend the title to said premises against the claims of all persons lawfully claiming or to claim the same or any part thereof.

In testimony whereof I hereto set my hand and scroll for seal this 26th day of December, A. D. 1876.

TOM MOORE. [L. S.]

Attest:

W. H. MATTHEWS.
T. L. FREEMAN.

THE STATE OF TEXAS, *County of Polk:*

Before me, T. F. Meece, county clerk of Polk county, this
32 day personally appeared Tom Moore, to me well known, who acknowledged that he signed, executed, and delivered the within and foregoing deed for the purposes and considerations therein specified.

Witness my official signature and seal, at my office in Livingston, on this the 26th day of December, A. D. 1676.

[SEAL.] T. F. MEECE,
Co. Clerk, Polk Co.,
By T. L. FREEMAN, *Deputy.*

Certificate of Record.

STATE OF TEXAS, *County of Polk:*

I, T. F. Meece, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly and correctly recorded in my office on the 14 day of April, 1877, at 10.11 o'clock a. m., in record book 2, pages 12 & 13.

Plaintiff's Amended Petition. Filed March 13, 1883.

In Circuit C't of U. S. for the Eastern Dist. of Texas.

EDMUND MENARD
vs
W. D. WILLIS *et als.* } No. 1168.

Now comes the plaintiff in the above styled and numbered
29 cause, by leave of the court, and amends his original and supplemental petitions filed herein as follows, to wit:

The league of land referred to in said petitions is more particularly described & identified as follows: Situated on the east bank of the Trinity river, beginning on a box elder 15 inches in diameter forming the southwest corner of the Thomas survey, from which a cottonwood 72 inches in dia. bears S. 40° 30′ west, $18\frac{8}{10}$ varas distant, and a gum tree 24 inches in dia. bears N. 45° east, $11\frac{3}{10}$ v's distant; thence south 89° east $8{,}902\frac{9}{10}$ varas were measured, and the 2nd corner was formed, from which a red oak 30 inches in dia. bears north 70° east $8\frac{4}{10}$ varas distant, and another red oak 29 inches in diameter bears S. 5° east $15\frac{2}{10}$ varas distant; thence S. 1° west 2,500 v's were measured, and the 3rd corner was formed, from which a gum tree 22 inches in dia. bears S. 37° 10′ west, $6\frac{9}{10}$ v's distant, and a beech 26 inches in diameter bears south 23° 31′ east $12\frac{9}{10}$ v's distant; thence north 89° W. $10{,}305\frac{5}{10}$ varas were measured, and the 4th corner was formed on the bank of said river, from which a cottonwood 24 inches in dia. bears N. 23° 30′ E., 24 varas distant, and another cottonwood 30 inches in dia. bears S. 66° 30′ east $40\frac{2}{10}$ varas distant; thence following said river with its meanderings up to the first corner, thus completing one league of land, for which plaintiff prays as in original petition.

And plaintiff alleges that the defendant, Thomas Moore,
30 obtained, by means unknown to your petitioner, a fraudulent and illegal title to the land in controversy herein, and has made deeds to the other defendants herein, and said deeds are clouds upon plaintiff's title to said property.

And plaintiff prays the court to remove said clouds from his title and quiet his possession to the said land; and, as in duty bound, he will ever pray, &c.

W. B. DENSON,
Counsel for Plaintiff.

Endorsements: "C. L. 1168. Edmund Menard *vs.* W. D. Willis *et als.* Plaintiff's amended petition. Filed March 13, 1883. C. Dart, cl'k, by Geo. C. Rives, dep'ty. W. B. Denson."

Deed from Tom Moore to Thomas Goggan. Filed March 14, 1883.

THE STATE OF TEXAS, *County of Polk:*

Know all men by these presents that I, Tom Moore, of said county and State, for and in consideration of the sum of four hundred dollars to me in hand paid by Thomas Goggan, of Galveston county, the receipt of which sum I hereby acknowledge, have bargained and

sold, and do hereby sell, alien, release, and convey, unto said Thomas Goggan the following-described real estate, to wit: Twelve hundred and eighty (1,280) acres of land lying and being situate on the east side of the Trinity river, in the said county of Polk and State of Texas, being a portion of that certain league of land granted by the government of Coahuila and Texas to Peter J. Me-
31 nard on the 18th day of July, A. D. 1835, and sold by said Menard to Menard and Vallez, by Menard and Vallez to J. H. Treselizan, by said Treselizan to W. L. Douglass, and by said William L. Douglass to me, the portion of said league hereby conveyed beginning at the southeast corner of said P. J. Menard league at a corner of the P. A. Sublett league; thence north 1,900 varas — corner; thence west 3,800 varas to corner; thence south 1,900 varas to corner; thence east 3,800 varas to the place of beginning.

To have and to hold the same, together with all and singular the rights, tenements, hereditaments, and appurtenances to the same belonging, or in anywise incident or appertaining, unto the said Thomas Goggin, his heirs and assigns, forever. And I, the said Tom Moore, do hereby bind myself, my heirs and legal representatives, to warrant and forever defend the title to said premises against the claims of all persons lawfully claiming or to claim the same or any part thereof.

In testimony whereof I hereto set my hand and scroll for seal this 26th day of December, A. D. 1876.

TOM MOORE. [L. S.]

Attest:

W. H. MATTHEWS.
T. L. FREEMAN.

THE STATE OF TEXAS, *County of Polk:*

Before me, T. F. Meece, county clerk of Polk county, this
32 day personally appeared Tom Moore, to me well known, who acknowledged that he signed, executed, and delivered the within and foregoing deed for the purposes and considerations therein specified.

Witness my official signature and seal, at my office in Livingston, on this the 26th day of December, A. D. 1676.

[SEAL.] T. F. MEECE,
Co. Clerk, Polk Co.,
By T. L. FREEMAN, *Deputy.*

Certificate of Record.

STATE OF TEXAS, *County of Polk:*

I, T. F. Meece, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly and correctly recorded in my office on the 14 day of April, 1877, at 10.11 o'clock a. m., in record book 2, pages 12 & 13.

In witness whereof I hereto sign my name and affix the seal of said court, at office in Livingston, this 14 day of April, 1877.

[SEAL.] T. F. MEECE,
Clerk of County Court, Polk Co., Texas.
By T. L. FREEMAN, *Deputy.*

Attached to the foregoing deed is the following, to wit:

Disclaimer of Thos. Goggan, except as to 1,230 *Acres.*

In the Circuit Court of the United States for the Eastern District of Texas. March Term, 1883.

EDMUND MENARD
v.
W. D. WILLIS *et als.* } 1168.

33 Now comes the defendant, Thomas Goggan, and disclaims all right and title to and in the land sued for and described in the plaintiff's petition, save and except twelve hundred and eighty acres thereof, being the same conveyed by Tom Moore to this defendant by deed dated the 26th day of December, 1876, which said deed is hereunto annexed (marked A) and made a part hereof, for certainty of description of said land, which alone is claimed by this defendant, and for which he prays judgment & general relief.

DAVIS & SAYLES,
Att'ys for Def't.

Endorsements: "No. 59. Tom Moore to Thomas Goggan. Deed to 1,280 acres. P. J. Menard. Filed for record April 10th, 1877, at 5.50 o'clock p. m. T. F. Meece, co. clerk, by T. L. Freeman, deputy. Filed March 14, 1883. C. Dart, clerk, by George C. Rives, dep't."

Hearing. From Minutes March Term, March 13, 1883.

EDMUND MENARD
v.
W. D. WILLIS, TOM MOORE, JOHN F. CARR, & K. B. DE WALT. } 1168.

This day came the parties to this suit by their respective attorneys, and upon motion leave is given the plaintiffs to amend, whereupon both parties announced themselves ready for trial; thereupon the defendants, W. D. Willis and John F. Carr, by their attorneys, disclaimed having any interest in the land herein sued for; thereupon the hearing of this cause was begun, and the same not being concluded the further hearing hereof is postponed until tomorrow.

34 *Verdict of Jury. Filed March* 14, 1883.

ED. MENARD
v.
W. D. WILLIS *et als.* } 1168.

Action of ejectment and to try title to land. March term, 1883.

In the above-entitled cause we, the jury, find our verdict in favor of the defendant, Thomas Goggan, for twelve hundred and eighty acres, the land described in the deed executed to him by Tom Moore, of date the 26th day of December, 1876.

M'ch 14, 1883.

C. J. THIELEN, *Foreman.*

Endorsements: "C. L. 1168. Edmund Menard *vs.* W. D. Willis *et als.* Verdict of jury. Filed March 14, 1883. C. Dart, clerk, by Geo. C. Rives, dep't."

Decree. From Minutes March Term, March 14, 1883.

EDMUND MENARD
v.
W. D. WILLIS *et als.* } No. 1168.

Action to try title to land.

Be it remembered that on this the 14th day of March, 1883, the above styled and numbered cause came on to be heard, and the plaintiff, Edmund Menard, appeared by his attorney, and the defendants, John F. Carr, Tom Moore, Walter Willis, John Goggan, and Thomas Goggan, having appeared by their attorneys, and the defendant, K. B. De Walt, although duly cited, failed to appear and answer in this behalf, but wholly made default, wherefore said plaintiff ought to recover of the said De Walt the land and premises described in his petition; and the said Walter D. Willis, John
35 F. Carr, and John Goggan, having made and entered their several pleas of disclaimer of all right and title in and to the land and premises sued for by said plaintiff, and the said Thomas Goggan having likewise disclaimed as to all of said land and premises save twelve hundred and eighty acres thereof, conveyed to him by the said Tom Moore by deed dated the 26th day of December, 1876, described as follows, to wit: "Twelve hundred and eighty acres of land lying and being situate on the east side of Trinity river, in the county of Polk and State of Texas, being a portion of that certain league of land granted by the government of Coahuila & Texas to Peter J. Menard on the 18th day of July, 1835, beginning at the southeast corner of said Peter J. Menard league, at a corner of the P. A. Sublett league; thence north 1,900 varas to corner; thence west 3,800 varas to corner; thence south 1,900 varas to corner; thence east 3,800 varas to the place of beginning, containing 1,280 acres of land. Thereupon came a jury of good and lawful men, to wit, C. J. Thielen and eleven others, who, being duly empaneled and sworn well and truly to try the issue joined between the

parties, and who, having heard the evidence, argument of counsel, and charge of the court, after due deliberation, returned into court the following verdict, to wit: "In the above-entitled cause we, the jury, find our verdict in favor of the defendant, Thomas Goggan, for twelve hundred and eighty acres, the land described in the
36 deed executed to him by Tom Moore, of date the 26th day of December, A. D. 1876.

"March 14th, 1883.

"(Signed) C. J. THIELEN, *Foreman.*"

It is therefore considered and adjudged by the court that the said plaintiff take and recover nothing by his said action against the said Thomas Goggan as to the said above-described twelve hundred and eighty acres of land, which are hereby adjudged and decreed to the said Goggan as his own property, free of all claims of the said plaintiff thereto.

And on consideration of the pleas of disclaimer in the premises and the defaults aforesaid made by the other defendants herein it is further considered, adjudged, and decreed that the said plaintiff recover of the said other defendants, namely, W. D. Willis, John F. Carr, John Goggan, Tom Moore, and K. B. De Walt, the land and premises described in his petition, to wit, that certain league of land granted to Pedro J. Menard, lying in Polk county, on the east bank of the Trinity river, beginning on a box elder 15 inches in diameter, forming the southwest corner of S. S. Thomas survey, from which a cottonwood 72 inches in diameter bears south 40 degrees 30 minutes west, $18\frac{8}{10}$ varas distant, and a gum tree 24 inches in diameter bears north 45° east $11\frac{3}{10}$ varas distant; thence south 89° east $8{,}902\frac{9}{10}$ varas were measured, and the 2d corner was formed, from which a red oak 30 inches in diameter bears north 70° east, $8\frac{4}{10}$ varas distant, and another red oak 29 inches in diameter bears south 5° east $15\frac{2}{10}$ varas distant; thence south 1° west 2,500 varas were measured, and
37 the 3rd corner was formed, from which a gum tree 22 inches in diameter bears south 37° 10′ west, $6\frac{9}{10}$ varas distant, and a beech 26 inches in diameter bears south 23° 30′ east, $12\frac{9}{10}$ varas distant; thence north 89° west $10{,}305\frac{5}{10}$ varas were measured, and the 4th corner was formed on the bank of said river, from which a cotton wood 24 inches in diameter bears north 33° 30′ east, 24 varas distant, and another cottonwood 30 inches in diameter bears south 66° 30′ east, $40\frac{2}{10}$ varas distant; thence following said river, with its meanders, up to the 1st corner to the place of beginning. And that said plaintiff likewise recover, as against the said Thomas Goggan, all the remainder of said league of land, after taking therefrom the above-described twelve hundred and eighty acres as aforesaid adjudged to him, the said Goggan, and that said plaintiff have his writ or writs of possession accordingly.

It is further ordered and adjudged that the said W. D. Willis, John Goggan, and Thomas Goggan recover of said plaintiff, Edmund Menard, their costs, respectively, in this behalf expended, for which they may have their execution.

And it is further ordered that said plaintiff have and recover his

costs of court in this behalf expended as against the said other defendants, K. B. DeWalt, Tom Moore, and John F. Carr, saving as to said Carr the costs accrued only to this day, for which said plaintiff may have his execution. It is further ordered that execution issue for the use of the officers of court against each party respect-
38 ively for the costs by him in this behalf incurred.

To which judgment and decree of the court the said plaintiff, by his attorney, excepted, and in open court gave notice of appeal.

From Minutes March Term, April 7th, 1883, *Fixing Am't of Appeal Bond.*

EDMUND MENARD
v.
W. D. WILLIS *et als.* } 1168.

Ordered, That the appeal bond in this case be fixed at the sum of ($250.00) two hundred and fifty dollars, to be executed & filed within thirty days from this date, and to be approved by the clerk of this court.

Bill of Exceptions. Filed April 18, 1883.

In Circuit Court of the United States for E. District of Texas.

EDMUND MENARD
vs.
W. D. WILLIS *et als.* } No. 1168.

Be it remembered that upon the trial of the above cause the defendants, W. D. Willis and John F. Carr, having disclaimed and a judgment by default having been entered against the defendant, K. B. De Walt, and the defendants, Thomas Goggan and Tom Moore, having pleaded "not guilty," the plaintiff introduced and read in evidence before the court and jury the following:

First (1). Land office certified translated copy of the original grant of one league of land by the government- of Coahuila & Texas to Peter J. Menard as a colonist, dated the 18th day of July, A. D. 1835, said league being described by field-notes as the one set out in the plaintiff's petition.

Second (2). Deed from Peter J. Menard to Pierre Menard
39 of the league of land mentioned above in No. 1, bearing date February 22nd, 1843.

Third (3). A certified copy of a judgment or order of the district court of San Jacinto county in cause No. 266 on the docket of said court, hereto annexed, marked Exhibit (A) and made part hereof.

Fourth (4). A further judgment or certified copy of decree of said court in cause No. 266, hereto annexed, marked Exhibit (B).

Fifth (5). Order of sale issued by the clerk of said district court, hereto annexed, and referred to as part hereof, marked Exhibit (C).

Sixth (6). And thereupon the plaintiff offered to read in evidence a certain deed purporting to be executed by one P. W. Herbert, sheriff of said county of San Jacinto, conveying said lands to Ed-

mund Menard. Said deed is hereto annexed and referred to as a part hereof, marked Exhibit (D), and to the reading of this deed in evidence the defendant, by his attorney, objected for the following causes & reasons:

1st. Because upon the evidence of the plaintiff as adduced no sufficient predicate had been laid to warrant the introduction of said instrument in evidence.

2nd. Because the documentary evidence above referred to and shown by the Exhibits (A), (B), and (C), and there was none other, showed no sufficient basis of right or authority thereby given to the said P. W. Herbert, sheriff of San Jacinto county, to make, execute, and deliver said deed, his action in making the sale of said land and otherwise complying with the supposed order of said district court of San Jacinto county, not having been reported back to and approved by said court and further order made in the premises.

3rd. Because P. W. Herbert, as sheriff of San Jacinto county, acting in his official capacity as such sheriff, could not (as by the recitals of said deed he attempted to do) sell at the court-house door of San Jacinto county lands lying in another county outside of the limits of San Jacinto county, to wit, in the county of Polk, and in pursuance of such sale make a good and sufficient deed to the purchaser by virtue of his office or any power possessed by him as such sheriff at the time and place of sale as shown in and by said deed, and that, therefore, said deed was invalid and insufficient as a muniment of title to divest the title of the land in controversy out of Pierre Menard, or his heirs, if dead, and invest the same in Edmund Menard, the supposed purchaser at such sale.

4th. Because by the face of said deed, as also from and by the Exhibits (A), (B), and (C) aforesaid, it appears that said deed, as an instrument of conveyance and muniment of title, is invalid, incompetent, and insufficient and void, for the reason that the said sheriff of San Jacinto county, in his official capacity as such, had no power or warrant of authority to make the sale and conveyance sought to be evidenced by said deed at the time and place therein stated, and that said district court of San Jacinto county had not and could not confer upon said officer power to sell and convey in his said official capacity lands lying beyond the limits of San Jacinto county, to wit, in said county of Polk, and said plaintiff having and offering no further evidence, on consideration of the objections of the defendant to the introduction of said deed, the same were sustained by the court; and to this ruling of the court the plaintiff excepted and asks that this his bill of exceptions be allowed and filed in this cause.

The plaintiff having closed his case, thereupon the defendant, Thomas Goggan, introduced his deed from Tom Moore for 1,280 acres of the land in controversy, dated December the 26th, A. D. 1876, and closed his case.

Whereupon the jury, under instructions from the court (no other evidence being offered by any party), returned a verdict in favor of said Thomas Goggan for 1,280 acres of said land described in said

deed, upon which the court rendered judgment in favor of said Goggan, as shown by the record, for 1,280 acres of said land.

The plaintiff insisted that under the appointment by the court P. W. Herbert, sheriff of San Jacinto Co., could make the sale.

And to the end that the exception to the ruling of the court as above set forth may be certified and preserved it is ordered that this, as a bill thereof, be allowed, and that the same be filed and enrolled as a part of the record of said cause.

AMOS MORRILL, *Judge.*

42 EXHIBIT A to bill of exceptions. Filed April 18, 1883.

Copy Judyment, Dist. Court, San Jacinto County.

E. MENARD *et al.*
vs.
FERDINAND MAXWELL *et al.* } No. 266.

APRIL 8TH, A. D. 1879.

This day came the parties, by their *their* attorneys—the non-residents, by their atty., appointed by the court, & the minors, by their guardians *ad litem*—and announced ready for trial, and, having waived a jury, submitted the matter in controversy, as well of fact as of law, to the court; then came on to be heard the defendants' demurrer to the petition, and the argument of counsel thereon being heard, it is the opinion of the court that the law is for the plaintiffs. It is therefore considered by the *by the* court that the demurrer be overruled, and the plaintiffs have their costs for the same.

Then came on to be heard the evidence and argument of counsel, which having been heard and duly considered by the court, it is the opinion of the court that the law and the evidence are for the plaintiffs. It is therefore ordered, adjudged, and decreed that the lands mentioned in plaintiffs' petition, to wit:

First. All that certain tract or parcel of land heretofore lying in Liberty but now in San Jacinto county and being known and designated as being a part of six leagues of land granted to Joakim Fernandez de Romayer by the commissioner, Francisco Madero, on the 25th day of April, A. D. one thousand eight hundred and thirty-one, as per record of said county of Liberty, record-book "C," pages
43 232, 233, & 234, andby the said Romayer transferred to Thomas F. McKinney & Michael B. Menard in the year A. D. 1832, and recorded in said county of Liberty, record-book "C," pages 372, '3, & '4, and by the said Thomas F. McKinney & Michael B. Menard, on the 1st day of February, A. D. 1843, as per record-book —, pages —, and *and* conveyed by Peter J. Menard, trustee of Michael B. Menard, to Pier Menard, as per record-book —, pages —, of said county, and more particularly described as follows, to wit: Beginning on the west bank of the Trinity river opposite the southwest corner of a league of land granted to Peter J. Menard; thence running west with the line of the aforementioned six leagues of land to the third corner of said six leagues; thence south with the western line of said six leagues to the northwest corner of two leagues

of land sold by the said Thomas F. McKinney and Michael B. Menard to Thomas W. Gilmer (the said two leagues being also a part of the aforesaid six leagues of land); thence east with the line of said Gilmer land to the Trinity river; thence north and up said river with its meanderings to the place of beginning, and containing within the above-described limits three thousand two hundred and ten acres of land, more or less.

Second. All that certain league of land, containing four [thousand] four hundred and twenty acres, granted to Peter J. Menard, as a colonist, by the commissioner, George Antonio Nixon, on the 20th
44 day of July, A. D. 1835, lying and being situated in the county of Polk, heretofore Liberty county, and beginning at and adjoining the northern line of a tract of land granted to Joakim Fernandez de Romayor, or commonly known as Menard mill tract, and the said line of the said mill tract being the southern line of said league of land, and being bounded on the north by a league of land granted to Geraldine S. Thomas and on the west by the Trinity river, and containing within the aforesaid boundaries one league of land, be partitioned and divided, if practicable, as follows, the division being made with reference to the quantity and quality of the land, to wit:

To Edward Menard ---------- one-eighth.
To Estelle B. Franklin ---------- one-sixteenth.
" Ferdinand Maxwell ---------- one thirty-second.
" Sophia A. Chenee ---------- one thirty-second.
" Amedie Menard ---------- one twenty-fourth.
" Peter H. Menard ---------- one twenty-fourth.
" Susan S. Menard ---------- one twenty-fourth.
" Bernice F. Chouteau ---------- one-eighth.
" Abzine M. Kemerly ---------- one-eighth.
" Annie M. Carlile ---------- one-sixteenth.
" Sarah Carlile ---------- one-sixteenth.
" Mary Campbell ---------- one forty-eighth.
" Augusta Menard ---------- one forty-eighth.
" Edmund S. Menard ---------- one forty-eighth.
To Lilley Shaw ---------- one forty-eighth.
" Augustine C. Menard ---------- one forty-eighth.
" Jessee Menard ---------- one forty-eighth.

And that C. P. Albee and J. P. Carlile and George Davison, citizens of San Jacinto county, be, and are hereby, appointed
45 commissioners to divide and partition said tracts of land among the said persons in the proportions as aforesaid, and that they report their action to this court at the next term thereof; and it appearing that plaintiffs and defendants are the heirs and legal representatives of Pier- Menard, as set out in the petition, and that the land described herein is the property of said Menard, who is now deceased, it is ordered, adjudged, and decreed that each of said persons, both plaintiffs and defendants, be fully and exclusively vested with the share or shares of said land allotted to him or her, and be divested of the shares allotted to each one of the others in the division and distribution which shall be made of said lands

under the report of said commissioners, and upon the report of said commissioners as to said division & distribution a further order will be made.

THE STATE OF TEXAS, *County of San Jacinto:*

I, G. B. Byrd, clerk of the district court of San Jacinto county, Texas, do hereby certify that the foregoing is a true and correct copy of the original judgment of the district court, now on file in said court, in book B, on pages 208, 209 210, & 211.

Given under my hand and the seal of said court, at office in Cold Springs, this the 10th day of November, A. D. 1882.

Attest: [SEAL.] G. B. BYRD, *Clerk*,
By JAS. A. ROE, *Deputy*.

46 THE STATE OF TEXAS, } *ss:*
County of Polk, }

I, T. F. Meece, clerk of the county court within and for the county and State aforesaid, do hereby certify that the within and foregoing instrument of writing, with its certificates of authentication, was filed for registration in my office on the 15 day of November, A. D. 1882, at 2 o'clock p. m., and duly recorded the 25 day of November, A. D. 1882, at 8 o'clock p. m., in the records of said county, in book No. F, pages 115, 116, 117, & 118, of deeds, &c.

Given under my hand and seal of office this 25 day of November, A. D. 1882.

[SEAL.] T. F. MEECE,
Clerk County Court, Polk County, Texas.

Endorsements: "C. L. 1135, 1168. No. 226. E. Menard *et al. vs.* Ferdinard Maxwell *et al.* Certified copy of judgment of the district court. No. 1595. Filed for record this 15th day of Nov'r, 1882, at 2 o'clock p. m. T. F. Meece, cl'k Co. C't, Polk Co., Texas. E. Menard *v.* J. F. Carr and E. Menard *v.* J. F. Carr *et als.* Filed March 12th, 1883. C. Dart, clerk, by Geo. C. Rives, dep'ty. (A)."

EXHIBIT (B) to Bill of Exceptions.

Copy Decree, Dist. Court, San Jacinto County.

E. MENARD *et al* }
vs. } No. 266.
F. MAXWELL *et al.* }

NOVEMBER 21*st*, 1879.

47 This day, on the coming in of the report of th*is* commissioners appointed at the April term, A. D. 1879, of this court to partition the lands in this suit and described in plaintiff's petition, and whereas said commissioners have reported that it is impract-able to divide said lands among the heirs as required by the commission issued from this hon. court on the 2nd day of June, A. D. 1879, and addressed to them:

Now, therefore, in order to affect the purposes of said petition, it is ordered and adjudged and decreed that the land described in plaintiff-'—, to wit:

First. All that certain tract or parcel of land heretofore lying in Liberty county, but now in San Jacinto county, and beaing known and designated as beaing a part of six leagues of land granted to Joakim Fernandez de Rumayon by the *com.* commissioner, J. Francisco Madero, on the 25th day of April, A. D. 1831, as per record of said county of Liberty, record-book C, page- 232, 233, & 234, and by the said Romayer transferred to Thomas F. McKinney & Michael B. Menard in the year 1832, and recorded in said county of Liberty, record-book C, page- 372, '3, & '4, and by the said Michael B. Menard on the 1st day of February, A. D. 1843, as per record-book, page —, and conveyed by Peter J. Menard, trustee of Michael B. Menard, to Pierée Menard, as per record-book —, page —, of said county, and more particularly described as follows, to wit: Beginning on the
48 west bank of the Trinity river opposite the southwest corner of league of land granted to Peter J. Menard; thence running west with the line of the aforementioned six league- of land to the third corner of said six league-; thence south with the western line of said six leagues to the northwest corner of *of* two leagues of land sold by the said Thomas F. McKinney and M. B. Menard to Thos. W. Gilmer (the said *said* two leagues *beaing* also beaing a part of the aforesaid six leagues of land); thence east with the line of said Gilmer land to the Trinity river; thence north and up said river with its meandering to the place of beginning, and containing within the above-described limits three thousand two hundred and ten acres of land, more or less.

Second. All that certain league of land, containing four thousand four hundred and twenty acres, granted to Peter J. Menard, lying and beaing in Polk county, heretofore Liberty county, and beginning and adjoining the northern line of a tract of land granted to Joakim T. de Romayer, or com-only known as Menard mill tract, and the line of the said mill tract, beaing the southern line of said league of land, and beaing bounded on the north by a league of land granted to G. S. Thomas and on the west by the Trinity river, and containing one league of land; that said land be sold by the sheriff of San Jacinto county, as under execution, in front of the court-
49 house door of San Jacinto county, in the town of Cold Springs, on the 1st Tuesday in January, A. D. 1880, after giving twenty day-' notice thereof by posting at three public places in San Jacinto county, one of which shall be the court-house of said county, said sale to be to the highest bidder for cash, and the proceeds to be paid by the sheriff of San Jacinto county to the plaintiffs and defendants herein in the following proportions, to wit:

Edmon Menard.....($\frac{1}{8}$) one-eighth.
Estelle B. Franklin.....($\frac{1}{16}$) one-sixteenth.
Ferdinand Maxwell.....($\frac{1}{32}$) one thirty-second.
Sophia A. Chenell.....(1–33) one thirty-second.
Amurie Menard.....($\frac{1}{24}$) one twenty-fourth.
Peter H. Menard.....($\frac{1}{24}$) one twenty-fourth.
Susan S. Menard.....($\frac{1}{24}$) one twenty-fourth.
Bernice F. Choutauw.....($\frac{1}{8}$) one-eighth.
Alzine McKinney.....($\frac{1}{8}$) one-eighth.

Annie M. Carlile ..... ($\frac{1}{16}$) one-sixteenth.
Mary Campbell ..... ($\frac{1}{48}$) one forty-eighth.
E. S. Menard ..... ($\frac{1}{48}$) one forty-eighth.
Lilley Shaw ..... ($\frac{1}{48}$) one forty-eighth.
A. C. Menard ..... ($\frac{1}{48}$) one forty-eighth.
Jesse Menard ..... ($\frac{1}{48}$) one forty-eighth.

And take there receipt for the same, which he will file with the papers of this cause.

It is further ordered, adjudged, and decreed that the commissioners herein be paid for their services in said partition as follows, to wit:

To C. P. Albea ..... ($10) ten dollars.
" J. P. Carlile ..... ($10) ten dollars.
" Geo. Davidson ..... ($10) ten dollars.

It is further ordered, adjudged, and decreed that a fee of
50 one hundred dollars be allowed Geo. I. Turnley, the attorney appointed by this court to represent the absent defendants, and that the same be deducted by the sheriff *pro rata* from shares of the defendants in the proceeds of the sale of said lands.

It is further ordered, adjudged, and decreed that the costs of this case, including the fees of the commissioners, shall be taxed against the share of each plaintiff and defendant, respectively, according to the amount received by them.

THE STATE OF TEXAS, *County of San Jacinto:*

I, G. B. Byrd, clerk of the district court of San Jacinto county, Texas, do hereby certify that the foregoing is a true and correct copy of the original judgment of the court now on file in said court.

Given under my hand and the seal of said court, at office in Cold Springs, this the 10th day of Dec., A. D. 1881.

[SEAL.] G. B. BYRD, *Clerk.*

Endorsements: "C. L. 1168, 1135. E. Menard *vs.* John F. Carr and E. Menard *vs.* J. F. Carr *et als.* Filed April 4, 1882. C. Dart, clerk. (B.)"

EXHIBIT (C) to Bill of Exceptions.

51 *Order of Sale. Issued Dec'r* 30, 1879, *by Clerk Dist. Court, San Jacinto County, Texas.*

District Court, San Jacinto County. Fall Term, A. D. 1879.

E. MENARD *et al. vs.* F. MAXWELL *et al.*

The State of Texas to the sheriff or any constable of San Jacinto county, Greeting:

Whereas on the 21st day of November, A. D. 1879, Edward Menard and Estelle B. Franklin recovered a judgment in the district court of San Jacinto county against Ferdinand Maxwell, Sophia Chenee, Joseph Chenee, Bernice F. Chouteau, Alzine McKeneday,

Robert A. Stewart, Peter H. Armdee, H. and Susan S. Menard, Ame M. and Sarah Carlile and their guardians, Mary Campbell and Robert Campbell; August, Edmond S., Augustine C., and Jessee Menard, and Lilley Shaw for the sale and partition of the proceeds of certain lands to be sold by the sheriff of San Jacinto county, first giving twenty days' notice of the time and place of said sale by posting in three public places in said county, one of which shall be the court-house door of said county, said land beaing described as follows, to wit:

First. All that certain tract or parcell of land heretofore lying — Liberty, but now in San Jacinto county, and beaing known and designated as beaing a part of six leagues of land granted to
52 Joakim Fernandez de Romayor by the commissioner. J. Francisco Madero, on the 25th day of April, A. D. 1831, as per record of said Liberty county, book C, page- 232, 233, & 234, and more particularly described as follows, to wit: Beginning on the west bank of the Trinity river opposite the southwest corner of a league of land granted to Peter J. Menard; thence running west with the line of the aforementioned six league- of land to the third corner of said six leagues; thence south with the western line of said six leagues to the northwest corner of two leagues of land sold by the said McKinney and Menard to Thomas W. Gilmer; thence east with the line of said Gilmer's land to the Trinity river; thence north and up said river with its meanderings to the place of beginning, containing 3,210 acres of land, more or less.

2d. All that certain league of land, containing 4,428 acres, granted to Peter J. Menard as a colonist by the commissioner, George Antonio Nixin, on the 20th day of July, A. D. 1835, lying and beaing situated in the county of Polk, heretofore Liberty county, and beginning at and adjoining at and adjoining the northern line of a tract of land granted Joakin Fernandez de Romayor, or com-only known as Menard's mill tract, and said line of the said mill tract beaing the southern line of said league of land and beaing bounded on the north by a league of land granted to Geraldus S. Thomas and on the west by the Trinity river.

53 These are therefore to command you that you proceed to advertize and sell said land according to law, and after the payment of the sum of — dollars, cost of suit, and the sum of ten dollars to C. P. Albea, ten dollars to J. P. Carlile, eight dollars to Geo. Davidson, commissioners appointed to value and partition said lands, and the further sum of one hundred dollars to G. J. Turnley, attorney for d'ft, to be paid *pro rat*-o by the defendants, and the ballance of the proceeds of the sale of said lands you will pay over to the following-named parties, plaintiffs and defendants, taking their rece-pts for the same, and filing said receipts with the clerk of this court, to wit, in the following proportions, viz:

Pl't'ff E. Menard ---------- ($\frac{1}{8}$) one-eighth.
" E. B. Franklin ---------- ($\frac{1}{16}$) one-sixteenth.
D'f't Ferdinand Maxwell ---------- ($\frac{1}{32}$) one thirty-second.
" Sophia A. Chena ---------- ($\frac{1}{32}$) one thirty-second.

D'f't Ameda Menard ---------- (1-34) one *thirty*-fourth.
" Peter H. Menard ---------- ($\frac{1}{24}$) one twenty-fourth.
" Susan S. Menard ---------- ($\frac{1}{24}$) one twenty-fourth.
" Bernice F. Chouteau ---------- ($\frac{1}{8}$) one-eighth.
" Alzine M. Kennerly ---------- ($\frac{1}{8}$) one-eighth.
" Annie M. Carlile ---------- ($\frac{1}{16}$) one-sixteenth.
" Sarah Carlile ---------- ($\frac{1}{16}$) one-sixteenth.
" Mary Campbell ---------- ($\frac{1}{48}$) one forty-eighth.
" August Menard ---------- ($\frac{1}{48}$) one forty-eighth.
Edmond S. Menard ---------- ($\frac{1}{48}$) one forty-eighth.
Lilley Shaw ---------- ($\frac{1}{48}$) one forty-eighth.
Augustine C. Menard ---------- ($\frac{1}{48}$) one forty-eighth.
Jesse Menard ---------- ($\frac{1}{48}$) one forty-eighth.
Robert A. Stewart ---------- ($\frac{1}{8}$) one-eighth.

54 Herein fail not, but of this writ make due return as the law directs.

Witness my hand and official seal, at office in the town of Cold Springs, on this the 30th day of December, A. D. 1879.

G. B. BYRD,
Clerk D. C., S. J. Co., Texas.

THE STATE OF TEXAS, *County of San Jacinto:*

I, G. B. Byrd, clerk of the district court of San Jacinto county, Texas, do hereby certify that the foregoing is a true and correct copy of the original order of sale now on file in said court.

Given under my hand and the seal of said court, at office in Cold Springs this the 10th day of December A. D. 1881.

[SEAL.] G. B. BYRD, *Clerk.*

Sheriff's Return on Order of Sale. Issued Dec'r 30, 1879.

The within order of sale came to hand on the same day — issued, to wit, on the 30th day of December A. D. 1879, and is returned duly executed by giving duely legal notices required by law in such cases and in the within order, to wit, by giving twenty days' notice of the time and place of sale of lands in said order described by posting notices thereof in three public places in the county of San Jacinto, Texas, one of which was at the court-house door thereof, and after giving said notice I, as sheriff of
55 San Jacinto county, Texas, proceeded to sell the lands described in said within order of sale on the first Tuesday and the 3rd day of February, A, D. 1880, at the court-house door of San Jacinto county, Texas, unto Edward Menard for the sum of four thousand and seven hundred and eighty-two dollars ($4,782.00), he beaing the highest and best bidder therefor. And the said Edmon-Menard has paid unto me the said sum of four thousand seven hundred and eighty-two dollars ($4,782.00), and I have, in pursuance of the within and foregoing order of sale, paid out of the money received by me in the sale aforesaid the whole amount of the said sum of four thousand seven hundred and eighty-two dollars to the persons and in the amounts as follows, to wit:

The sum of —— dollars as cost of said suit to the officers of court to whom it belonged, respectively, and the sum of ten dollars to C. P. Albea, and the sum of ten dollars to J. P. Carlile, and the sum of ten dollars to Geo. Davidson, as commissioners appointed to divide the said land described in said order, and the further sum of one hundred dollars to G. J. Turnley, attorney for d'f'ts, appointed by the court, as shown in the within order, and the sum of five hundred and sixty-three dollars to Bearnice F. Chouteau, one of the parties to said suit for partition, and took receipt therefor, No. 1, and I paid other sums and amounts of the proceeds of the sale of said lands to the other parties as directed to do by the court in the written order, to wit:

56 I paid to Adile Fitzpatrick (formerly) Maxwell, and took receipt No. 2, the sum of $35 20
To Sophia A. Chenne, the sum [of] 140 55
" E. B. Franklin " 281 50
" Alzies M. Kemerly 563 00
" Robert Stewart 563 00
" Annie M. Carlile & Sarah Carlile 563 00
" Amelia Menard, Susan S. Menard, & P. H. Menard 563 00
" Peter Menard Maxwell 35 20
To Eveline H. Tolver, formerly Eveline Maxwell 35 00
" Augustine Menard as guardian for minors Augustine C. & Jessee Menard, and also Ed. S. Menard, Mary Campbell, Lilley Shaw, and Augustus Menard, the sum of.. $563 00

And I took receipts from said parties above — to & have filed the same with the clerk of the district court, as per within order of sale. (Said receipts are numbered from one to eleven, inclusive.) And the said Edmund Menard having complied with the terms of said sale in all respects, I, as sheriff, made, executed, and delivered unto him a deed of conveyance of the land sold as above, and now make due return of the within order of sale this the 26th day of April, A. D. 1880.

P. W. HERBERT,
Sher-ff S. J. Co.

THE STATE OF TEXAS,
County of San Jacinto:

57 I, G. B. Byrd, clerk of the district court of San Jacinto county, Texas, do hereby certify that the foregoing is a true and correct copy of the original return of sheriff now on file in said court.

Given under my hand and the seal of said court, at office in Cold Springs, this the 10th day of December, A. D. 1881.

[SEAL.] G. B. BYRD, *Clerk.*

THE STATE OF TEXAS, } ss:
County of Polk, }

I, T. F. Meece, clerk of the county court within and for the county and State aforesaid, do hereby certify that the within and foregoing

instrument of writing, with its certificates of authentication, was filed for registration in my office on the 19 day of December, A. D. 1881, at 7 o'clock p. m., and duly recorded the 31 day of December, A. D. 1881, at 9 o'clock p. m., in the records of said county, in book No. S, pages 348, '49, '50, & '51 of deeds, &c.

Given under my hand and seal of office this 31 day of December, A. D. 1881.

[SEAL.] T. F. MEECE,
Clerk County Court, Polk County, Texas.

Endorsements: "No. 1321. E. Menard *et al. vs.* F. Maxwell *et al.* Filed for record this Dec. 19, 1881, at 7 o'clock p. m. F. F. Meece, cl'k C. C. Polk Co., Texas. $2.50 fee. C. L. 1168, 1135. E. Menard *vs.* John F. Carr *et als.;* also E. Menard *vs.* J. F. Carr. Filed Ap'l 4, 1882. C. Dart, clerk."

58 EXHIBIT D to Bill of Exceptions.

Deed from P. W. Herbert, Sheriff of San Jacinto County, to Edmund Menard. Dated Febr'y 3rd, 1880.

THE STATE OF TEXAS, *San Jacinto County:*

Know all men by these presents that whereas, on the 21st day of November, A. D. 1879, Edmund Menard & Estelle B. Franklin recovered a judgment and order in the district court of San Jacinto county aforesaid, in cause No. 266, against Ferdinand Maxwell, Sophia A. Chenu, Bernice F. Choteau, A. M. Kennerly, R. A. Stewart, Peter H., Amidee H., and S. S. Menard, Annie M. and Sarah Carlile, and their guardian-, Mary Campbell and Robert Campbell; August, Edmund S., Augustine C., and Jesse Menard, and Lillie Shaw for the sale and distribution of the proceeds of said sale of certain lands in said judgment of said court mentioned and hereinafter particularly described, to be sold by the sheriff of said county of San Jacinto by virtue of the said order of said court; and

Whereas, by virtue of a certain order of sale issued out of the said district court on the 30th of December, A. D. 1879, tested by the clerk of said court and the seal thereof, in said cause No. 266 of the docket of said court, wherein E. Menard *et al.* are plaintiffs and F. Maxwell *et als.* are defendants, under and in accordance with said decree of said court made as aforesaid, directed and delivered to me as sheriff of said county of San Jacinto, commanding me to proceed to advertise and sell, for cash, said land hereinafter de-
59 scribed according to law, and after payment of the costs in said cause incurred to pay over the remainder or balance of the proceeds of said sale as provided and directed in said order:

I, P. W. Herbert, sheriff as aforesaid, did on the 3rd day of February, A. D. 1880, it being the first Tuesday in said month of February, within the hours prescribed by law, sell the said land hereinafter described at public vendue, at the court-house door of San Jancinto Co., in the town of Cold Springs, having given notice of the time, place, & terms of sale by posting in three public places in the said county, one of which was the court-house door, for twenty

days prior to the day of sale; and whereas at said sale the said premises and land were struck off to Edmund Menard for the sum of forty-seven hundred & eighty-two dollars ($4,782), he being the highest & best bidder therefor, and that being the highest secure bid for the same: Now, therefore, in consideration of the premises and the payment of the said sum of forty-seven hundred & eighty-two dollars, the receipt of which is hereby acknowledged, I, P. W. Herbert, sheriff as aforesaid, have sold, and do by these presents grant, sell convey, & release, unto the said Edmund Menard all the right, title, estate, and interest which the said parties, plaintiffs and defendants hereinbefore named in said cause, No. 266, in said court, had on the said 21st day of November, A. D. 1879, or at any time afterwards of, in, and to the following lands, to wit:

60 All that certain tract or parcel of land heretofore lying in Liberty, but now in San Jacinto Co., and being known and designated as being a part of six leagues of land granted to Joakin Fernandez de Rumayor by the commissioner, J. Francisco Madera, on the 25th day of April, A. D. 1831, as per record of said Liberty Co., book C, pages 232, 233, & 234, and more particularly described as follows, to wit: Beginning at the west bank of the Trinity river, opposite the southwest corner of a league of land granted to Peter J. Menard; thence running west with the line of the aforementioned six leagues of land to the third corner of said six leagues; thence south with the western line of said six leagues to the northwest corner of two leagues of land sold by McKinney & Menard to Thomas W. Gilmer; thence east with the line of said Gilmer's land to the Trinity river; thence north and up said river, with its meanderings, to the place of beginning, containing thirty-two hundred and ten acres of land, more or less.

Also, all that certain league of land, containing forty-four hundred and twenty-eight acres, granted to Peter J. Menard, as a colonist, by the commissioner, George Antonio Nixon, on the 20th day of July, A. D. 1835, lying and being situated in the county of Polk, heretofore Liberty county, and beginning at and adjoining the northern line of a tract of land granted to Joakin de Rumayor, or

61 commonly known as Menard's mill tract, and the said line of the said mill tract being the southern line of said league of land, and being bounded on the north by a league of land granted to Geraldus S. Thomas and on the west by Trinity river; to have and to hold all and singular unto him, the said Edmund Menard, his heirs and assigns, forever, the above and foregoing tracts of land, together with all and singular the rights, privileges, and appurtenances to the same belonging or in anywise incident or appertaining.

Witness my official signature this the 3rd day of February, A. D. 1880.

P. W. HERBERT,
Sheriff San Jacinto Co., Tex.

Witnesses:
W. L. OWENS.
T. L. ROSS.

Acknowledgment.

THE STATE OF TEXAS, *County of San Jacinto:*

Before me, G. B. Byrd, clerk county court San Jacinto county, Texas, on this day personally appeared P. W. Herbert, sheriff S. J. Co., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3rd day of February, A. D. 1880.

[SEAL.] G. B. BYRD,
Clerk C. C., S. J. Co.

Certificate of Record.

THE STATE OF TEXAS, *San Jacinto County:*

62 I, G. B. Byrd, county clerk in and for said county, do hereby certify that the foregoing instrument of writing, dated on the 3rd day of February, 1880, with its certificates of authentication, was filed for record in my office this 3rd day of February, A. D. 1880, at 10 o'clock a. m., and duly recorded the 4 day of March, A. D. 1881, at 9 o'clock a. m., in the records of said county, in vol. — on page —.

Witness my hand and the seal of the county court of said county, at office in Cold Springs, Texas, the day and year last above written.

[SEAL.] G. B. BYRD,
Clerk C. C., San Jacinto County.

Endorsements: "C. L. 1168, 1135. P. W. Herbert, sheriff S. J. county, to Edmund Menard. Deed. Filed for record at 10 o'c. a. m. on February 3rd, 1880. E. Menard *vs.* Jno. F. Carr and E. Menard *vs.* J. F. Carr *et als.* Filed April 4, 1882. C. Dart, clerk. (D.)"

The foregoing bill of exceptions, with Exhibits A, B, C, & D attached thereto, is endorsed as follows, to wit: "C. L. 1168. Edmund Menard *vs* W. D. Willis *et al.* Bill of exceptions. Filed April 18th, 1883. C. Dart, clerk, by W. L. Hanscom, deputy."

63 *Bond on Writ of Error. Filed April* 27, 1833.

Know all men by these presents that we, Edmund Menard, as principal, and John Adriance and H. M. Trueheart, as sureties, are held and firmly bound unto Thomas Goggan in the full and just sum of two hundred and fifty dollars, to be paid to the said Thomas Goggan or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 27th day of April, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at a term of the circuit court of the United States for the eastern dist. of Texas, at Galveston, in a suit depending in said court between Edmund Menard, as plaintiff, and W. D. Willis, K. B. De Walt, Tom Moore, John F. Carr, and Thomas Goggan, as

defendants, a judgment was rendered against the said Edmund Menard for costs as against Thomas Goggan, and adjudging 1,280 acres of the land sued for to said Thos. Goggan, and the said Edmund Menard having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas Goggan citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

64 Now, the condition of the above obligation is such that if the said Edmund Menard shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

E. MENARD. [L. S.]
JOHN ADRIANCE. [L. S.]
H. M. TRUEHEART. [L. S.]

Sealed and delivered in presence of—
G. POPE.
R. L. ROGERS.

Approved by—

C. DART,
Clerk U. S. Cir'ct Court, Eastern Dist. of Texas, at Galveston.

Endorsements: "C. L. 1168. Edmund Menard *v.* Thomas Goggan. Bond on writ of error. Filed April 27th, 1883. C. Dart, clerk."

Writ of Error. Filed May 26, 1883.

UNITED STATES OF AMERICA, *ss:*

65 The President of the United States to the honorable the judges ot the circuit court of the United States for the eastern district of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at Galveston, between Edmund Menard, plaintiff, and Thomas Goggan, defendant, in case numbered 1168 upon the docket of said court at law, entitled Edmund Menard, plaintiff, *v.* W. D. Willis *et als.*, defendants, in which a final judgment was entered in said court on the 14th day of March, 1883, in favor of said Thomas Goggan, a manifest error hath happened, to the great damage of the said Edward Menard, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings

aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

66 Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 7th day of May, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] C. DART,
Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.

Allowed by—
AMOS MORRILL,
Judge U. S. Courts, East. Dist. of Texas.

Endorsements: "C. L. 1168. Edmund Menard *v.* Thomas Goggan. Writ of error to Supreme Court U. S. Filed May 26th, 1883. C. Dart, clerk."

Copy [of] Writ of Error Deposited in Clerk's Office May 28th, 1883.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court be-

67 fore you, at Galveston, between Edmund Menard, plaintiff, and Thomas Goggan, defendant, in case numbered 1168 upon the docket of said court at law, entitled Edmund Menard, plaintiff, *v.* W. D. Willis *et als.*, defendants, in which a final judgment was entered in said court on the 14th day of March, 1883, in favor of said Thomas Goggan, a manifest error hath happened, to the great damage of the said Edmund Menard, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 7th day of May, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] C. DART,

68 *Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.*

Allowed by—
AMOS MORRILL,
Judge U. S. Circuit Court, East. Dist. Texas.

A true copy of the original writ of error issued in said cause. I certify.

Witness my hand and seal of said circuit court, at Galveston, May 28th, 1883.

[SEAL.] C. DART, *Clerk.*

Endorsements: "C. L. 1168. Edmund Menard *v.* Thomas Goggan. Copy writ of error to Supreme Court U. S. Original endorsed: Filed May 26th, 1883. C. Dart, clerk. This copy deposited in the clerk's office for the defendant in error May 28th, 1883. C. Dart, clerk. Filed May 28th, 1883. C. Dart, clerk."

Citation on Writ of Error to U. S. Supreme Court. Filed May 28, 1883.

The United States of America to Thomas Goggan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of
69 error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, at Galveston, wherein Edmund Menard is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this — day of May, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] AMOS MORRILL,
Judge U. S Court, East. Dist. of Texas.

Return.

On this 28th day of May, in the year of our Lord one thousand eight hundred and eighty-three, personally appeared J. H. Letherman, deputy U. S. marshal, E. dist. Tex., before me, the subscriber, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to Thomas Goggan, the within-named defendant, in person, at the city of Galveston, on this 28th day of May, 1883.

J. H. LETHERMAN,
Dep'y U. S. M., E. D. T.

70 Sworn to and subscribed the 28th day of May, A. D. 1883, before me—

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., G.

Endorsements: "C. L. 1168. Edmund Menard *v.* Thomas Goggan. Citation on writ of error to Supreme Court U. S. Returned & filed May 28th, 1883. C. Dart, clerk."

Certificate to the Transcript.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing sixty-nine & one-quarter (69¼) pages of writing to contain a true copy of the record and of all proceedings in the cause lately pending in said court, numbered 1168 on the law docket of said court, entitled Edmund Menard *v.* W. D. Willis *et als.*, as the same now appear on file and of record in my office.

To certify which witness my hand and seal of said court, at Galveston, this 28th day of May, A. D. 1883.

[Seal United States Circuit Court Eastern District of Texas.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Endorsed on cover: E. Texas C. C. U. S. No. 177. Edmund Menard, plaintiff in error, *vs.* Thomas Goggan. Filed 16th October, 1883.

121-258

OFFICE SUPREME COURT U. S.
FILED
OCT 16 1883
JAMES H. McKENNEY, CLERK

SUPREME COURT OF UNITED STATES.

EDMUND MENARD, *Plaintiff in Error.*

vs.

THOS. GOGGAN, *Defendant in Error.*

ERROR FROM CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TEXAS, AT GALVESTON.

BRIEF OF PLAINTIFF IN ERROR.

Clarke & Courts, Stationers, Galveston.

SUPREME COURT OF UNITED STATES.

EDMUND MENARD, *Plaintiff in Error.*

vs.

THOS. GOGGAN, *Defendant in Error.*

ERROR FROM CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TEXAS, AT GALVESTON.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a suit brought by the plaintiff in error, Edmund Menard, against W. D. Willis, Tom Moore, John F. Carr, K. B. DeKalb, John Goggan and the defendant in error, Thomas Goggan, to recover one league of land, situated in Polk County, Texas, and originally granted to Pedro J. Menard by the government of Coahuila and Texas, on the 18th July, 1835. Plaintiff in error claimed the land in controversy by virtue of a deed made by "the sheriff of San Jacinto County," P. W. Herbert, on the 3d

day of February, A. D., 1880, (Trans. p. 2) which deed was made by the said sheriff of San Jacinto County in pursuance of an order of sale, issued out of the District Court of San Jacinto County, on the 30th day of December, 1879, commanding him to sell said land for the purposes of the partition of said league, and a certain other tract situated in San Jacinto County, among certain parties named in said order of sale, being the heirs of Pierre Menard, deceased. (Trans., p. 51).

On the 3d February, 1880, the sheriff of San Jacinto County, P. W. Herbert, having properly advertised the lands ordered to be sold by him, sold the league in question and the San Jacinto tract to the highest and best bidder, for cash, before the courthouse door of San Jacinto County, and the plaintiff, Edmund Menard, became the purchaser for the sum of $4,782.

On the 26th April, 1880, the sherriff of San Jacinto County, made conveyance of and title to said land to said purchaser.

On the 19th July, 1881, plaintiff in error brought this suit against the defendant in error and others, in an action of trespass to try title.

The defendants, W. D. Willis, John F. Carr and John Goggan, disclaimed, and defendant in error disclaimed except as to 1280 acres of the land.

On the 13th March, 1883, this cause came on to be heard. The plaintiff in error offered and read in evidence—

First—A translated copy from the General Land Office, of the original grant of one league of land by the government of Coahuila and Texas, to Peter J. Menard as a colonist, dated the 18th day of July, A. D. 1835. (Trans., p. 19).

Second—Deed from Peter J. Menard to Pierre Menard, of the league of land mentioned above, bearing date February 22, 1843. (Trans., p. 14).

Third—A certified copy of a judgment of partition of the District Court of San Jacinto County, in cause No. 266 of the docket of said court, bearing date May 8th, 1879. (Trans., p. 46).

Fourth—A certified copy of a supplemental judgment in said cause No. 266, of the District Court of San Jacinto County. (Trans., p. 46.)

Fifth—Order of sale issued by the clerk of said District Court to the sheriff of San Jacinto County, dated December 30, 1879, and the return thereon. (Trans., p. 51).

Then the plaintiff in error offered in evidence the deed of conveyance, made by the sheriff of San Jacinto County, P. W. Herbert, to the land in controversy, (Trans., p. 58), to the introduction of which the defendant in error objected, and the court sustained the objections, to which ruling the plaintiff in error excepted, and presented his bill of exceptions, which was allowed by the court and filed. (Trans., p. 38).

The defendant in error then offered and read in evidence his deed from Tom Moore, for 1280 acres

of said league of land, dated December 26th 1876. (Trans., p. 86).

Thereupon, under the charge and direction of the court, the jury found for the defendant in error, 1280 acres of the land in controversy, and judgment was entered by the court in accordance therewith. Plaintiff recovered against the other defendants who had not disclaimed. (Trans., p. 34).

From this judgment, the plaintiff in error has sued out his writ of error, and assigns as error the following:

Assignment of Errors.

First. That the court erred in excluding from the consideration of the jury the deed from P. W. Herbert, the sheriff of San Jacinto County, to Edmund Menard, for the league of land in controversy, bearing date April 26th, 1880.

Second. The court erred in deciding that the deed from P. W. Herbert, "the sheriff of San Jacinto County," was inadmissible, and insufficient in law to convey the land in controversy to the plaintiff in error.

Third. The court erred in rendering judgment in favor of defendant in error, Goggan, for 1280 acres of the land in controversy.

Fourth. The court erred in refusing to give plaintiff in error judgment for the whole league of land.

These assignments of error will be considered in their order:

First. That the court erred in excluding from the consideration of the jury, the deed from P. W. Herbert sheriff of San Jacinto County, to Edmund Menard, for the league of land in controversy, bearing date April 26th, 1880.

This proceeding for partition, instituted in the District Court of San Jacinto County, out of which the deed from the sheriff of San Jacinto County to E. Menard grew, was had under the Revised Statutes of Texas, adopted A. D. 1879, which provides as follows, to wit:

"Art. 3465. Any joint owner or claimant of any real estate, or of any interest therein, may compel a partition thereof between the other joint owners or claimants thereof, in the manner provided in the succeeding articles of this chapter.

"Art. 3466. Such joint owner or claimant may file his petition in the District Court of the county in which the real estate sought to be partitioned, or a portion thereof is situated, which petition shall state:

"1. The names and residences, if known, of each of the other joint owners or claimants of such real estate.

"2. The share or interest which the plaintiff and the other joint owners or claimants of said real estate own or claim, so far as known to the plaintiff.

"3 The real estate sought to be partitioned shall be described in such manner as that the same may

be distinguished from any other real estate, and the estimated value thereof stated.

"Art. 3467. Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners or joint claimants named therein, as in other cases, and such citations shall be served in the same manner and for the same length of time provided for the service of citation in other cases.

"Art. 3468. Upon the hearing of the cause the court shall determine—

"1. The share or interest of each of the joint owners or claimants in the real estate sought to be divided.

"2. All questions of law or equity, affecting the title to such real estate, or any part thereof, which may arise.

"Art. 3469. The court shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act.

"Art. 3470. Should the commissioners be of opinion that a fair and equitable division of the real estate, or of any part thereof, cannot be made, they

shall report the fact to the court in writing, and under oath, stating their reasons for such opinion; and if the court should be satisfied that the report of the commissioners is correct, it shall order a sale of so much of such real estate as is incapable of partition, which sale shall be for cash or upon such other terms as the court may direct, and shall be made as under execution; and the proceeds thereof shall be returned into court and partitioned by the court between the persons entitled thereto, according to their respective interests therein."

This proceeding was had in San Jacinto county, where one tract of the land was situated (Trans. 42), and though a statutory proceeding it was competent for the court to appoint some one to make sale of the land in both San Jacinto and Polk counties, and such a one would act in the nature of a commissioner, who could, at the court house door of San Jacinto county, make a valid sale of any land in the State of Texas, under proper orders of the District Court.

The District Court, under its equity powers, appointed the sheriff of San Jacinto county to make the sale and distribute the fund (Trans. 48, 49), and he was accordingly ordered to make it and distribute the proceeds among those entitled to receive, in the order and in amounts named in the order of sale. (Trans. 51.)

The sheriff of San Jacinto county sold the land to the highest and best bidder, for cash, in front of

the court house door of his county, and complied literally with the terms of the order of sale; and plaintiff became the purchaser for the consideration of $4,782, which amount was paid by him to the sheriff aforesaid, and for which said sheriff executed and delivered to him a deed of conveyance for the land. (Trans. 54–56.)

The plaintiff in error submits that the sale was made by the person named in the order of sale—the sheriff of San Jacinto county,—it was made at the place and upon the terms named in the order, and the money was paid by the purchaser as recited in the deed. (Trans. 54.)

The parties to this proceeding are not heard to complain of its irregularity, but have accepted it as proper, and as a defeasance of their title to the land.

Can a stranger complain of the proceeding and attack it collaterally? We think not.

AUTHORITIES.

Grassmeyer vs. Beeson, 18 Tex. R., 753.

McCreevy vs. Fortson, 35 Tex. R., 641.

Grant vs. McKinney, 36 Tex., 62.

Wells vs. Polk, 36 Tex., 120; 37 Tex. R., 42; 39 Tex. R., 165.

Lucketts vs. Townsend, 3 Tex. R., 119.

The defendant in error objects to the proceeding under which the land was sold, because the sale was not reported back and approved by the court which ordered it.

While it would have been in compliance with the statute if the proceeds had been returned into court, yet it would not have been in compliance with the order of sale under which the land was sold, and the purchaser was not required to go back further than the order of sale to find the authority and powers of the person making the sale. The vendee's title would not be affected by failure to report back the purchase money for distribution. The objection that the sale was not reported back to the court for approval is untenable, as the statute does not require such approval.

AUTHORITIES.

Art. 3,479, Rev. Stats. of Texas.

Goudy's Lessee vs. Shank, 8 Ohio, 416.

Wrights s. c. Ohio, 529; 4 Wheaton, 503; 3 Ohio, 191; 1 M. & S., 425; 3 Ohio, 561.

It is further claimed by defendant in error that the deed was inadmissible because the sheriff of San Jacinto county undertook, in his *official* capacity of sheriff, to sell land in Polk county, by his act at the court house door of San Jacinto county.

The court appointed the sheriff of San Jacinto county to make the sale (Trans. 48); he made it by virtue of this appointment and order of sale, and not by virtue of his official powers; and if, in making the deed, he does not clearly distinguish the capacity in which he acts, from his general official character as sheriff, we go to his warrant of authority --the *order of sale*—which determines the authority in which he acts; and every intendment of the deed must be taken to follow the order of sale. P. W. Herbert, who was, at the date of the order, sheriff of San Jacinto county, acted as the commissioner in making the sale, but designated himself as the sheriff of San Jacinto county, probably to identify himself as the person named in the order.

This proceeding was not void as the District Court of San Jacinto county had jurisdiction of the subject matter; and if not void, the judgment, order of sale and deed can not be attacked collaterally, as was undertaken in this case by the defendant in error.

AUTHORITIES.

Withers vs. Patterson, 27 Tex. R., 491.
Maverick vs. Salinas, 15 Tex. R., 57.
Hatch vs. De la Garza, 22 Tex. R., 176.
35 Tex. R., 641; 36 Tex. R., 62; 37 Tex. R., 42.

Second Assignment of Error.

The court erred in deciding that the deed from P. W. Herbert, "the sheriff of San Jacinto County," was inadmissible and insufficient in law to convey the land in controversy to the plaintiff in error.

The court had jurisdiction of the subject matter and all the proceedings, including the judgment, are presumed to have been regular.

The order of sale, made in pursuance of the judgment is directed "To the sheriff or any constable of San Jacinto County," but that part of it "or any constable," is superfluous. It was executed by the person named in the judgment of the court, and by the person named in the order of sale, the money was paid by, and a deed executed to the purchaser, conveying all the interests of the plaintiffs and defendants in the suit for partition, to Edmund Menard the purchaser. The heirs of Pierre Menard, deceased, have accepted the purchase money, their receipts are filed in the court (Trans., pp. 55, 56), and they have for years acquised in the sale and conveyances, but a stranger complains that it was irregular. "As a general rule where the partition is invalid, for some reason, as to some or all the parties, as where some of the cotenants were not parties to the suit, or the partition has not been sanctioned by a final judgment of the court, etc., if the parties treat it as valid and accept their purparty, it becomes binding on them by such subsequent acts of ratification, and

they have been held estopped from alleging its invalidity," and much rather would a stranger be estopped.

AUTHORITIES.

Freeman on Cotenancy and Partition, sec. 535.
Millican vs. Millican, 24 Tex. R., 439.
Jackson vs. Richtmeyer, 13 Johns, 376.
White vs. Clapp, 8 Metc. 228.
Piatt vs. Hubbel, 5 Ohio, 343.
Wetchel vs. Thompson, 39 Geo., 561.
Craig vs. Craig, Bail's Eq., 103.
Grassmeyer vs. Beeson, 18 Tex. R., 753.
Clifton vs. Lilley, 12 Tex. R., 130.

THIRD ASSIGNMENT OF ERROR.

The court erred in rendering judgment in favor of the defendant in error, Thos. Goggan, for 1280 acres of the land in controversy.

The plaintiff in error had vested in him the title of all the heirs of Pierre Menard, in whom the paramount title existed. The District Court, by virtue of its general equity powers, may decree partition between joint owners of property, and is armed with the power of a court of equity to do full justice to the parties.

AUTHORITIES.

Grassmeyer vs. Beeson, 18 Tex. R., 753, 765.
Ellis vs. Rhone, 17 Tex. R., 131.
Payne vs. Benham, 16 Tex. R., 364.

FOURTH ASSIGNMENT OF ERROR.

The court erred in refusing to give plaintiff in error judgment for the whole league of land.

Plaintiff in error exhibited an unbroken chain of title from the sovereignty of the soil to himself, reaching as far back as July 18th, 1835.

The defendant in error exhibits only a deed bearing date December, 1876, without deraignment of title from the government.

If, as contended under the foregoing assignments of error, the proceedings in the partition suit were not void, then the court should, under the evidence offered, should have given to plaintiff in error judgment for the league of land in controversy.

Wherefore, plaintiff in error submits that the judgment of the Circuit Court should be reversed, and the court be ordered to reform the judgment, decreeing the land to plaintiff in error.

Respectfully submitted,

Jas. W. Butterfield
Att'y for Plaintiff in Error.

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